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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[EPA-HQ-OPPT-2021-0357; FRL-8632-02-OCSPP]

RIN 2070-AK99

Asbestos; Reporting and Recordkeeping Requirements under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing reporting and recordkeeping requirements for asbestos under the Toxic Substances Control Act (TSCA). EPA proposes to require certain persons that manufactured (including imported) or processed asbestos and asbestos-containing articles (including as an impurity) in the four years prior to the date of publication of the final rule to electronically report certain exposure-related information. This action would result in a one-time reporting obligation. EPA emphasizes that this proposed requirement would include asbestos that is a component of a mixture. The information sought includes quantities of asbestos (including asbestos that is a component of a mixture) and asbestos-containing articles that were manufactured (including imported) or processed, types of use, and employee data. Reported information would be used by EPA and other Federal agencies in considering potential future actions, including risk evaluation and risk management activities. EPA is requesting public comment on all aspects of this proposed rule and has also identified items of particular interest for public input.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2021-0357, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Daniel R. Ruedy, Data Gathering and Analysis Division (Mailcode: 7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-7974; email address: ruedy.daniel@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process asbestos. Any use of the term “manufacture” in this document will encompass “import,” and the term “manufacturer” will encompass “importer.” Any use of the term “asbestos” will apply to asbestos in bulk form, in an article, or as an impurity, or as a component of a mixture. For a more thorough discussion of the subject asbestos forms, please see Unit III.A. of this document. You may also be potentially affected by this action if you manufacture (including import) or process other chemical substances or mixtures not on the TSCA inventory if they include asbestos.

The following list of North American Industry Classification System (NAICS) codes are provided to assist in determining whether this action might apply to you. This list is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include entities identified in:

- NAICS code 211 – Oil and Gas Extraction;
- NAICS code 212 – Mining (except Oil and Gas);
- NAICS code 325 – Chemical Manufacturing;
- NAICS code 327 – Nonmetallic Mineral Product Manufacturing;
- NAICS code 332 – Fabricated Metal Product Manufacturing;
- NAICS code 336 – Transportation Equipment Manufacturing;
- NAICS code 339 – Miscellaneous Manufacturing;
- NAICS code 447 – Gasoline Stations; and
- NAICS code 811 – Repair and Maintenance.

Additionally, you should carefully examine the proposed regulatory text in this

document to determine if your business would be impacted by this rule. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

EPA is proposing this action under the authority of section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), which generally authorizes EPA to promulgate rules that require each person, other than small manufacturers (including importers) or processors, who manufactures (including import) or processes, or proposes to manufacture (including import) or process, the chemical substance identified in the rule, to maintain such records and submit such reports as the EPA Administrator may reasonably require.

Although TSCA section 8(a)(1) provides an express exemption for small manufacturers (including importers) and processors, TSCA section 8(a)(3) enables EPA to require small manufacturers (including importers) and processors to report under TSCA section 8(a) with respect to a chemical substance that is the subject of a rule proposed or promulgated under TSCA sections 4, 5(b)(4), or 6, or is the subject of an order in effect under TSCA sections 4 or 5(e), a consent agreement under TSCA section 4, or relief that has been granted under a civil action under TSCA sections 5 or 7.

Asbestos is subject to TSCA section 6 rulemaking under the Asbestos Ban and Phaseout rule of 1989 (Ref. 1). A portion of this rule was overturned in *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991), however, a portion remains. The remaining portion of EPA's 1989 asbestos ban and phaseout rule prohibits the manufacture, importation, processing, and distribution in commerce of: Commercial Paper, Corrugated Paper,

Rollboard, Specialty Paper, Flooring Felt, and New Uses (the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989). *See* 40 CFR 763.160 *et seq.* Thus EPA proposes to exercise its authority provided under TSCA section 8(a)(3)(A)(ii) to require small manufacturers (including importers) and processors of asbestos or asbestos-containing mixtures (other than Libby Amphibole asbestos) to maintain records and submit reports. Libby Amphibole asbestos is not subject to an applicable proposed or promulgated rule under TSCA sections 4, 5(b)(4) or 6, an order in effect under TSCA section 4 or 5(e), or a consent agreement under TSCA section 4, nor is it the subject of relief that has been granted under a civil action under TSCA section 5 or 7. Therefore, small manufacturers (including importers) and processors of Libby Amphibole asbestos are expected to be exempt from this proposed reporting and recordkeeping rule. For a more thorough discussion of the proposed reporting for small manufacturers (including importers) and processors, see Unit III.B.

TSCA section 8(a)(1)(A) also excludes from the scope of EPA's regulatory authority under that paragraph any manufacturer (including importer) or processor of "a chemical substance described in subparagraph (B)(ii)." TSCA section 8(a)(1)(B)(ii), in turn, provides EPA authority to require recordkeeping and reporting by each person (other than a small manufacturer [including importer] or processor) who manufactures (including imports) or processes, or proposes to manufacture (including import) or process, a chemical substance "in small quantities...solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product," but only to the extent EPA determines the recordkeeping and/or reporting is

necessary for the effective enforcement of TSCA. EPA is not proposing to require recordkeeping or reporting by persons who manufacture (including import) or process, or propose to manufacture (including import) or process, asbestos in small quantities solely for research or analysis for the development of a product as described in TSCA section 8(a)(1)(B)(ii). “*Small quantities solely for research and development*” is defined in 40 CFR 704.3 to mean quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that are not greater than reasonably necessary for such purposes.

TSCA section 14 imposes requirements for the assertion, substantiation, and review of information that is claimed as confidential under TSCA (also known as confidential business information or CBI. Some information submitted at the time of the proposed reporting under this rule may be claimed as confidential.

C. What action is the Agency taking?

EPA is proposing to require asbestos manufacturers (including importers) and processors to report to EPA certain information known to or reasonably ascertainable by those entities. For this action, the term “asbestos” includes various forms of asbestos, including Libby Amphibole asbestos, as described in more detail in Unit III.A. of this document. The following is a brief list of the primary data requirements being proposed. These proposed requirements are described in detail in Unit III.

1. Asbestos domestic manufacturers (Asbestos Mine and Mill): the provisions in this proposed rule would require asbestos domestic manufacturers to provide the quantity manufactured per asbestos type, use, and employee exposure information to EPA. This would include situations in which asbestos is being mined or milled as an intentional or

non-intentional impurity, such as in vermiculite and talc.

2. Asbestos importers: the provisions in this proposed rule would require importers of asbestos to provide the quantity imported per asbestos type, use, and employee exposure information. This includes importers of mixtures containing asbestos, articles containing asbestos components, and impurities (in articles, bulk materials, or mixtures, such as in talc and vermiculite).

3. Asbestos processors: the provisions of the proposed rule would require processors of asbestos (including processors of mixtures or articles) to provide the quantity processed per asbestos type, use, and employee exposure information. This includes both *primary processors* and *secondary processors* of asbestos, as described in Units III.F.3. and 4. This would include situations in which asbestos is appearing as an intentional or non-intentional impurity, such as in vermiculite and talc.

D. Why is the Agency taking this action?

The Agency is proposing this action to obtain certain information known to or reasonably ascertainable by manufacturers (including importers) and processors of asbestos that EPA believes would help the Agency better understand the exposures and uses associated with asbestos, including asbestos in articles and as an impurity (in articles, bulk materials, or mixtures, such as in talc and vermiculite), that fall under the scope of this proposal. Reported information would be used by EPA and other Federal agencies in considering potential actions involving asbestos, including EPA's TSCA risk evaluation and risk management activities. This action is also subject to a settlement agreement, as discussed in Unit II.C.4. of this document. For a more thorough discussion of the TSCA risk evaluation and risk management process, please see Unit II.C.5. of this

document.

E. What are the estimated incremental impacts of this action?

EPA has prepared an economic analysis (Ref. 2) of the potential impacts associated with this proposed rule. The primary purpose of this proposed rule is the collection of detailed data on asbestos uses and exposures. Reported information would be used by EPA and other Federal agencies in considering potential actions involving asbestos, including EPA's TSCA risk evaluation and risk management activities. EPA estimates that at least 18 firms may submit reports for 27 sites based on the intentional manufacturing (including importing) or processing of asbestos, including mixtures and articles containing asbestos. EPA does not currently have information on the extent to which asbestos occurs as an impurity in products that are currently manufactured (including imported) or processed in the U.S., so the number of firms that may report for impurities is not estimated.

The industry is expected to incur one-time burdens and costs associated with rule familiarization, form completion, CBI claim substantiation, recordkeeping, and electronic reporting activities. Where asbestos is intentionally manufactured (including imported) or processed, the estimated average burden and cost per site ranges from approximately 12 hours and \$ 1,146 to 26 hours and \$ 2,265, depending on the type of activities the respondent is engaged in and the information known to or reasonably ascertainable by them. For products where asbestos occurs as an impurity, the estimated average burden and cost per site ranges from approximately 17 hours and \$ 1,573 to 40 hours and \$ 3,334, again depending on the type of activities and the information that is known to or reasonably ascertainable. EPA estimates a total industry quantified burden of

approximately 1,157 hours, with a quantified total cost of approximately \$ 99,496.

EPA estimates that at least 14 small firms, which included article importers, will be affected by the proposed rule. Of those small firms, 12 are expected to have cost impacts of less than 1% of annual revenues, one is expected to have impacts between 1-3%, and one is expected to have impacts of more than 3% of annual revenues. Again, these estimates do not include firms that are impacted by the requirement to report for impurities. The Agency is expected to incur a cost of \$ 560,343. The total social burden and cost are therefore estimated to be approximately 1,157 hours and \$ 659,839, respectively (Refs. 2 and 3).

F. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. Background

A. What is TSCA section 8(a)?

TSCA section 8(a)(1) generally authorizes EPA to promulgate rules that require entities, other than small manufacturers (including importers) or processors, who manufacture (including import) or process, or propose to manufacture (including import) or process, a chemical substance to maintain such records and submit such reports as the EPA Administrator may reasonably require.

Under TSCA section 8(a)(2), EPA may require reporting and recordkeeping of the following information:

- The common or trade name, chemical identity and molecular structure of each chemical substance or mixture;
- Categories or proposed categories of use for each substance or mixture;
- Total amount of each substance or mixture manufactured (including imported) or processed, the amounts manufactured (including imported) or processed for each category of use, and reasonable estimates of the respective amounts to be manufactured (including imported) or processed for each of its categories of use or proposed categories of use;
- Descriptions of byproducts resulting from the manufacture (including import), processing, use, or disposal of each substance or mixture;
- All existing information concerning the environmental and health effects of each substance or mixture;
- The number of individuals exposed, and reasonable estimates of the number of individuals who will be exposed, to each substance or mixture in their places of employment and the duration of their exposure; and
- The manner or method of disposal of each substance or mixture, and any change

in such manner or method.

B. What is asbestos?

Asbestos is one or more of a group of highly fibrous silicate minerals that readily separate into long, thin, strong fibers that have sufficient flexibility to be woven, are heat resistant and chemically inert, are electrical insulators, and are therefore suitable for uses where incombustible, nonconducting, or chemically resistant materials are required.

Asbestos is a mineral fiber that occurs in rock and soil. Because of its fiber strength and heat resistance, asbestos has been used in a variety of building construction materials for insulation and as a fire retardant. Asbestos has also been used in a wide range of manufactured goods, mostly in building materials (roofing shingles, ceiling and floor tiles, paper products, and asbestos cement products), friction products (automobile clutch, brake, and transmission parts), heat-resistant fabrics, packaging, gaskets, and coatings (Ref. 3).

For purposes of this proposed rule, EPA considers “asbestos” to include the asbestiform varieties included in the definition of asbestos in TSCA Title II (added to TSCA in 1986), section 202 and Libby Amphibole asbestos. “Asbestos” is defined in TSCA Title II, section 202 as the asbestiform varieties of six fiber types – chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite. The general CAS Registry Number (CASRN) of asbestos is 1332-21-4; this is the only asbestos on the TSCA Inventory. However, CASRNs are also available for specific fiber types. See Unit III.A.1. for additional discussion.

In addition, EPA is proposing to include reporting for Libby Amphibole asbestos (mainly consisting of tremolite ([CASRN 77536-68-6], winchite [CASRN 12425-92-2],

and richterite [CASRN 17068-76-7]) to identify if this particular type of asbestos continues to be manufactured (including imported) or processed in the United States. The term “Libby Amphibole asbestos” is used in this document to identify the naturally occurring mixture of amphibole mineral fibers of varying elemental composition (winchite, richterite, tremolite, etc.) that have been identified in the Rainy Creek complex near Libby, Montana (Ref. 4). EPA does not anticipate that there is ongoing manufacture (including import) or processing of the Libby Amphibole asbestos, but to help confirm this understanding has included this substance in the scope of this proposed rule.

EPA requests comment on whether reporting on Libby Amphibole asbestos’ component parts, winchite and richterite, which are not asbestos types but are indicative of the presence of Libby Amphibole asbestos in a substance, should be included in the scope of this TSCA section 8(a) data collection and be reported on individually in addition to reporting on Libby Amphibole asbestos (Ref. 5). Any reporting on Libby Amphibole asbestos would improve EPA’s understanding of this substance and would inform risk evaluation activities involving asbestos.

Asbestos is a hazard to human health (Ref. 6). Some of the health effects caused by exposure to asbestos are:

- Lung cancer;
- Ovarian cancer;
- Laryngeal cancer; and
- Mesothelioma, a cancer of the thin lining of the lung, chest and the abdomen and heart.

As part of the TSCA Risk Evaluation of chrysotile asbestos published in

December 2020 (Ref. 6). EPA evaluated the database of health effects associated with asbestos exposure cited in U.S. and international data sources and reviewed and evaluated scientific information on toxicity, exposure, and hazard. Many authorities have established that there are causal associations between asbestos exposures and cancer (Ref. 7).

For a more thorough discussion on the asbestos types addressed by this proposed rule, see Unit III.A. of this document.

C. What are relevant past and ongoing EPA TSCA actions on asbestos?

1. 1982 Asbestos Reporting Requirements Rule.

In 1982, EPA finalized a rule entitled: “Asbestos Reporting Requirements” (47 FR 33198, August 30, 1982) (TSH-FRL-2124-4), under the authority of TSCA section 8(a) that required one-time reporting to EPA by asbestos manufacturers, importers, and processors. The information sought included data on the quantities of asbestos used in making products, employee exposure data, and waste disposal and pollution control equipment data. Reported information was used by EPA and other Federal agencies in considering the regulation of asbestos.

The information gathered as a result of the 1982 data collection rule was used in the drafting of the 1989 rule entitled “Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions” (54 FR 29460, July 12, 1989) (FRL-3476-2). In that action, EPA used TSCA section 6 authority to ban most asbestos-containing products. However, most of the ban was overturned in 1991 by the Fifth Circuit Court of Appeals. *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991). As a result, the 1989 asbestos regulation only bans new uses of asbestos in products that would be

initiated “for the first time” after 1989 and five other specific product types (40 CFR part 763, Subpart I).

It has been nearly 40 years since the 1982 rule was implemented, and EPA needs an updated data collection to better understand the universe of asbestos types in commerce and the specific entities presently manufacturing (including importing) and processing asbestos, including asbestos-containing products. This proposal is modeled after the 1982 data collection but requires more detailed information from manufacturers (including importers) and processors in addition to information about asbestos appearing as an impurity.

2. Chemical Data Reporting (CDR) Rule.

In limited circumstances, asbestos has been reported under the Chemical Data Reporting (CDR) rule (40 CFR part 711). The CDR rule requires manufacturers (including importers) to provide EPA with information on the production and use of chemicals in commerce. (Ref. 8). Under CDR, naturally occurring substances (including asbestos), impurities, and chemical substances when imported as part of articles are exempted from reporting (Ref. 9). This proposed rule differs from the existing CDR universe of data collected as it would: (a) be a one-time data collection as opposed to a reoccurring data collection; (b) require reporting for naturally-occurring asbestos; (c) require processors of asbestos to report (i.e., sites manufacturing (including importing) and/or processing asbestos would be subject to this rule); and (d) require reporting by entities who are manufacturing (including importing), and/or processing asbestos and to whom the asbestos content is known or reasonably ascertainable (see TSCA section 8(b)(2)). “Known to or reasonably ascertainable by” would be defined to include “all

information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.” EPA acknowledges that it is possible that an importer, particularly an importer of articles containing asbestos, may not have knowledge that they have imported asbestos and thus not report under this rule, even after they have conducted their due diligence under this reporting standard as described in this paragraph. Such an importer should document its activities to support any claims it might need to make related to due diligence. EPA is asking for public comment on importers’ anticipated ability to know or reasonably ascertain whether those entities import asbestos. This proposed rule would also differ from CDR data collection as it would apply to impurities and articles, both of which are exempted from CDR data collection (40 CFR 711.10(b) & (c)) (Ref. 9, Ref. 10).

3. 2019 Significant New Use Rule (SNUR) for Discontinued Uses of Asbestos.

In 2019, EPA promulgated a SNUR (84 FR 17345, April 25, 2019) (FRL-9991-33) for the manufacturing (including import) or processing of asbestos for use in adhesives, sealants, and roof and nonroof coatings; arc chutes; beater-add gaskets; cement products; extruded sealant tape and other tape; filler for acetylene cylinders; friction materials (with certain exceptions); high-grade electrical paper; millboard; missile liner; packings; pipeline wrap; reinforced plastics; roofing felt; separators in fuel cells and batteries; vinyl-asbestos floor tile; woven products; any other building material; and any other use of asbestos that was not already prohibited under TSCA or under evaluation in the TSCA Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos.

Activities that were under evaluation in the TSCA Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos were not subject to the SNUR since there was ongoing

manufacturing (including importing) or processing for those uses. Those activities not subject to the SNUR were manufacturing (including importing) or processing for the use of chrysotile in asbestos diaphragms; sheet gaskets; oilfield brake blocks; aftermarket automotive brakes/linings; other vehicle friction products; and other gaskets. Because all the ongoing uses of asbestos identified in the SNUR were of chrysotile, any use of crocidolite, amosite, anthophyllite, tremolite, or actinolite would be considered a significant new use.

A person wishing to begin manufacturing, importing, or processing asbestos (including as part of an article) for a significant new use must first submit a Significant New Use Notice (SNUN) to EPA. Before any significant new use of asbestos begins, EPA must evaluate it for potential risks to health and the environment and take any necessary regulatory action, which may include a prohibition.

4. TSCA Section 21 Petitions on Asbestos.

On September 27, 2018, and January 31, 2019, respectively, petitioners Asbestos Disease Awareness Organization et al. (ADAO) (Ref. 11), and Attorneys General from ten states and the District of Columbia (the States) (Ref. 12) submitted petitions under TSCA section 21 (15 U.S.C. 2620) requesting EPA to amend the CDR Rule in ways that petitioners asserted would increase reporting of asbestos. Both petitions sought to close alleged asbestos CDR reporting gaps (including immediate submission of asbestos reports), remove the naturally occurring and byproduct exemptions, lower the reporting threshold, require reporting by processors, and eliminate the ability to claim information as confidential, in order to maximize the information reported to aid the Agency in conducting the ongoing TSCA section 6 risk evaluation of asbestos and subsequent

TCSA Section 6(a) risk management rule (see Unit II.C.3. for more information). EPA denied the petitions on December 21, 2018, and April 30, 2019, respectively, and issued associated explanations for the denials in the *Federal Register* on February 12, 2019 (84 FR 3396) (FRL-9988-56) and May 8, 2019 (84 FR 20062) (FRL-9992-67), respectively, asserting that the petitioners failed to demonstrate that it is necessary to amend the CDR rule. EPA's denial was also in part due to a timing issue with the asbestos risk evaluation.

Petitioners filed lawsuits on February 18, 2019, and June 28, 2019, respectively, in the U.S. District Court in the Northern District of California, reiterating concerns about the need to amend the CDR rule to increase asbestos reporting. *Asbestos Disease Awareness Organization v. EPA*, No. 19-CV-00871; *State of California et al. v. EPA*, No. 19-CV-03807. The cases were consolidated. On December 22, 2020, after full briefing and oral argument, the Court issued an opinion granting summary judgment to Plaintiffs and denying summary judgment to EPA.

Following the litigation, EPA reached an agreement with the Plaintiffs on June 7, 2021. The parties agreed that no later than nine months from the effective date of the agreement (Ref. 13), EPA will sign for publication in the *Federal Register*, a notice of proposed action to promulgate a rule pursuant to TSCA section 8(a), 15 U.S.C. 2607(a), for the maintenance of records and submission to EPA of reports by manufacturers (including importers) and processors of asbestos (including asbestos that is a component of a mixture), and articles containing asbestos (including as an impurity) that address the information-gathering deficiencies identified in the Court's Summary Judgment Order. Additionally, the parties agreed that no later than eighteen months from the effective date of the agreement (Ref. 13), EPA will sign for publication in the *Federal Register* a notice

of final action regarding the proposed TSCA section 8(a) rule.

5. TSCA Risk Evaluation for Asbestos.

Pursuant to TSCA section 6(b)(4)(A), EPA conducts risk evaluations to determine whether a chemical substance presents unreasonable risk of injury to health or the environment, without consideration of costs or non-risk factors, including an unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant by the Agency, under the conditions of use. (15 U.S.C. 2605(b)(4)(A)).

EPA is developing the TSCA Risk Evaluation on asbestos in two parts. In December 2020, EPA released the TSCA Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos (Ref. 6), which determined that chrysotile asbestos presents an unreasonable risk of injury to health based upon the following conditions of use: processing and industrial use of chrysotile asbestos diaphragms in the chlor-alkali industry; processing and industrial use of chrysotile asbestos-containing sheet gaskets in chemical production; industrial use and disposal of chrysotile asbestos-containing brake blocks in the oil industry; commercial use and disposal of aftermarket automotive chrysotile asbestos-containing brakes/linings; commercial use and disposal of other chrysotile asbestos-containing vehicle friction products; commercial use and disposal of other asbestos-containing gaskets; consumer use and disposal of aftermarket automotive chrysotile asbestos-containing brakes/linings; and consumer use and disposal of other asbestos-containing gaskets.

EPA initially focused the risk evaluation for asbestos on chrysotile asbestos as this is the only asbestos type that EPA believes is currently imported, processed, or distributed in the U.S. EPA informed the public of this decision to focus on ongoing uses

of asbestos and exclude legacy uses and associated disposals in the Scope of the Risk Evaluation for Asbestos document, published in June 2017 (Ref. 14). However, in late 2019, the court in *Safer Chemicals, Healthy Families v. EPA*, 943 F.3d 397, 426-27 (9th Cir. 2019) held that EPA's Risk Evaluation Rule (82 FR 33726, July 20, 2017) (FRL-9964-38) should not have excluded "legacy uses" (i.e., uses without ongoing or prospective manufacturing (including importing), processing, or distribution) or "associated disposals" (i.e., future disposal of legacy uses) from the definition of conditions of use, although the court did uphold EPA's exclusion of "legacy disposals" (i.e., past disposal). Following this court ruling, EPA continued development of the risk evaluation for chrysotile asbestos and determined that the complete TSCA Risk Evaluation for Asbestos would be issued in two parts. The TSCA Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos was released in December 2020, allowing the Agency to expeditiously move into risk management for the unreasonable risk identified in Part 1.

EPA is currently conducting the TSCA Risk Evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos. EPA intends to include in Part 2 of the risk evaluation the legacy uses and associated disposal of asbestos. For the purposes of scoping and risk evaluation, EPA has adopted the definition of asbestos as defined by TSCA Title II (added to TSCA in 1986), section 202 definition as the "asbestiform varieties of six fiber types – chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite," The TSCA Title II definition identified five amphibole types of asbestos (crocidolite, amosite, anthophyllite, tremolite, and actinolite) plus a serpentine type

(chrysotile). Part 2 will also consider Libby Amphibole Asbestos as well as asbestos present as an impurity in talc and other substances. EPA expects that the data collected from this proposed rule will be used in Part 2 of the TSCA Risk Evaluation for asbestos and will also inform risk management actions for asbestos under TSCA section 6(a).

D. How will EPA use the information proposed to be collected?

Reported information would be used by EPA and other Federal agencies in considering potential actions on asbestos, including EPA's TSCA risk evaluation and risk management activities. Reporting requirements may provide EPA with baseline information needed to assess whether certain "conditions of use" of asbestos pose an unreasonable risk to health or the environment under TSCA section 6(b). EPA must consider reasonably available information as part of the risk evaluation process under TSCA section 6(b), and as part of any subsequent risk management rulemaking efforts under TSCA section 6(a). Reported information would be useful in the risk management stage because EPA would consider potential risk management actions taking into account relevant information obtained through this rulemaking. Understanding the health risks of asbestos and protecting the public, including potentially exposed or susceptible subpopulations, from these risks is a priority for EPA.

As part of the risk evaluation process under TSCA section 6(b), EPA must determine whether asbestos presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including unreasonable risk to relevant potentially exposed or susceptible subpopulations, under the conditions of use. EPA must also use scientific information and approaches in a manner that is consistent with the requirements in TSCA for the best available science, and

ensure decisions are based on the weight of scientific evidence. See TSCA section 26(h) and (i), 15 USC 2625(h) and (i). In order to follow this framework, EPA shall take into consideration reasonably available information to inform the Part 2 risk evaluation. Data collected by this rule could help to fill potential data gaps that EPA may have for asbestos that could better inform Part 2 of the asbestos risk evaluation. Following risk evaluation, TSCA mandates that EPA take action if the Agency determines that asbestos presents unreasonable risk of injury to health or the environment. EPA needs to ensure that sufficient information is reasonably available on the uses and trends of asbestos activities to develop a risk management rule that eliminates the unreasonable risk. The information collected in this rulemaking may be available to support the Part II risk evaluation and the final risk evaluation document expected by December 1, 2024. Additionally, the information collected in this rulemaking will help inform risk management following the risk evaluation process.

For these reasons, EPA believes that the reporting and recordkeeping requirements proposed in this document are reasonable. See TSCA section 8(a)(1)(A).

III. Summary of Proposed Reporting and Recordkeeping Requirements

A. What chemical substances would be reportable under this rule?

EPA is proposing to require the reporting of information on specific asbestos forms, or if specific information is not known or reasonably ascertainable, reporting on “asbestos” as it is more generally listed on the TSCA Inventory. EPA is also proposing to require the reporting of information related to asbestos as it is manufactured (including imported) or processed in bulk, as a component of a mixture, in an article, or as an impurity in bulk materials or products.

See Units III.A.2 and 3 for more details.

1. Asbestos forms.

EPA is proposing to obtain manufacturing (including importing) and processing information associated with the following different asbestos forms, and therefore is proposing to require that reporting be completed for each of the forms, to the extent that the information is known or reasonably ascertainable. If the specific asbestos type is unknown, a submitter would provide information under the general asbestos form (CASRN 1332-21-4). See Unit II.B. for more information about what is considered asbestos:

- Asbestos – CASRN 1332-21-4;
- Chrysotile – CASRN 132207-32-0;
- Crocidolite – CASRN 12001-28-4;
- Amosite – CASRN 2172-73-5;
- Anthophyllite – CASRN 77536-67-5;
- Tremolite – CASRN 77536-68-6;
- Actinolite – CASRN 77536-66-4;
- Libby Amphibole Asbestos – CASRN not applicable (mainly consisting of tremolite [CASRN 77536-68-6], winchite [CASRN 12425-92-2], and richterite [CASRN 17068-76-7]).

2. Asbestos as an impurity.

Impurity means a chemical substance which is unintentionally present with another chemical substance (40 CFR 704.3). Asbestos may occur naturally as an impurity in other products such as talc, vermiculite, and potentially other substances. These

products are distributed and used in commerce in the United States. For example, talc, a hydrous magnesium silicate mineral, is used in a wide variety of applications. Talc deposits can contain asbestos as an impurity that poses a risk to human health (Ref. 15). If all other reporting conditions are met, these products would be subject to reporting under this rule. EPA proposes to collect data on asbestos as an impurity because EPA may lack data on the extent to which asbestos as an impurity occurs in products under TSCA jurisdiction that are currently being manufactured (including imported) or processed. In particular, data on asbestos as an impurity could better inform the Part 2 asbestos risk evaluation where EPA will determine and then evaluate the relevant conditions of use of asbestos in talc.

3. Articles containing asbestos.

This rule would require reporting on articles containing asbestos (including as an impurity). An “article” is defined in 40 CFR 704.3 as “a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end-use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.” EPA proposes to collect more data on imported articles containing asbestos; this data could inform Part 2 of the TSCA Risk Evaluation for Asbestos where EPA will determine and then evaluate the relevant conditions of use of such articles containing asbestos. Articles included in Part 1 of the

TSCA Risk Evaluation for Asbestos included brake blocks for use in the oil industry, rubber sheets for gaskets used to create a chemical-containment seal in the production of titanium dioxide, certain other types of preformed gaskets, and some vehicle friction products (Ref. 18); EPA is interested in identifying if there are other articles or if there is information about specific forms of asbestos in these articles.

4. Asbestos that is a component of a mixture.

Under TSCA section 3(10) (15 USC 2602(10)), the term "mixture" means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured (including imported) for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined. EPA proposes to collect data on asbestos in circumstances where it is a component of a mixture to inform Part 2 of the TSCA Risk Evaluation for Asbestos. In the Part 2 Evaluation, EPA will determine the relevant conditions of use of asbestos in talc; EPA will use the results to evaluate asbestos exposures and associated risks.

Legislative history affirms that EPA can conduct risk evaluations on a chemical substance when the substance is present as a component of a mixture (See Senate Congressional Record, S3511, June 7, 2016): "In section 6(b) of TSCA, as amended by the Frank R Lautenberg Chemical Safety for the 21st Century Act, EPA is directed to undertake risk evaluations on chemical substances in order to determine whether they

pose an unreasonable risk to health or the environment. Some have questioned whether the failure to explicitly authorize risk evaluations on mixtures calls into question EPA's authority to evaluate the risks from chemical substances in mixtures. The definition of 'conditions of use' ...plainly covers all uses of a chemical substance, including its incorporation in a mixture, and thus would clearly enable and require, where relevant, EPA to evaluate the risks of the chemical substance as a component of a mixture."

B. Will small businesses need to report?

Although TSCA section 8(a)(1) provides an exemption for small manufacturers (including importer) and processors, TSCA section 8(a)(3) enables EPA to require small manufacturers (including importers) and processors to report pursuant to TSCA section 8(a) with respect to a chemical substance that is the subject of a rule proposed or promulgated under TSCA sections 4, 5(b)(4), or 6, an order in effect under TSCA sections 4 or 5(e), a consent agreement under TSCA section 4, or relief that has been granted under a civil action under TSCA sections 5 or 7. Six of the asbestos types subject to this proposal (chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite) are subject to a TSCA section 6 rule under the Asbestos Ban and Phaseout rule of 1989 (Ref. 1) (40 CFR 763.160 *et seq*) and therefore EPA is proposing that these forms of asbestos are not eligible for a small manufacturer (including importer) or processor exemption. Although most of the original ban was overturned in 1991 by the Fifth Circuit Court of Appeals, a portion of the section 6 rulemaking remains in effect (*See* 40 CFR 763.160 *et seq.*) Libby Amphibole asbestos, however, is not subject to an applicable proposed or promulgated rule under TSCA sections 4, 5(b)(4), or 6; an order under TSCA sections 4 or 5(e); or a consent agreement under TSCA section 4; and is not the subject of

relief that has been granted under a civil action under TSCA section 5 or 7. Therefore, EPA is proposing that Libby Amphibole asbestos continue to be eligible for such an exemption.

EPA's experience with TSCA Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos, indicates that small businesses are associated with certain identified conditions of use associated with asbestos. For some conditions of use, EPA identified a single business engaged in each of the activities and, in two cases, the companies were small businesses. In addition, EPA identified multiple conditions of use for which it was unable to identify a single company engaged in the condition of use. Because of the low number of companies found to be involved in specific conditions of use, it is possible that companies associated with other conditions of use that need to be considered in the Part 2 TSCA Risk Evaluation, are small businesses.

Because EPA has much less information on the activities of small businesses, the Agency is concerned that certain conditions of use for which the Agency lacks detailed information may be conducted largely or entirely by small businesses. Given EPA's experience and the petitioners' concerns (Refs. 11 and 12), the Agency believes that exempting all small businesses from reporting may exclude most or all of the reporting for some conditions of use which could severely hinder EPA's risk evaluation or risk management activities. As a result, EPA is proposing that small businesses—small manufacturers (including importers) and processors of asbestos, and asbestos mixtures (other than Libby Amphibole asbestos)—will need to maintain records and report under this action.

As discussed previously, at the time of this proposal, Libby Amphibole asbestos is

not the subject of any of the activities described in TSCA section 8(a)(3) (Unit III.B.) and therefore manufacturers (including importers) and processors of that substance may be eligible for a small business exemption.

EPA proposes to use the small manufacturer (including importer) definition already established at 40 CFR 704.3. Thus, any entity manufacturing (including importing) Libby Amphibole asbestos would be considered a small manufacturer and exempt from reporting if it meets either of these two standards (as adjusted by an inflation index):

- Total sales during the most recent year of the reporting period, combined with those of the parent company, domestic or foreign (if any), are less than \$120 million and the annual production and importation volume of that chemical substance (i.e., asbestos) does not exceed 100,000 pounds at any individual plant site. If the annual production and importation volume of the chemical substance (i.e., asbestos) at any individual site owned or controlled by the submitter is greater than 100,000 pounds, the submitter is required to report for that particular site unless it qualifies as small under the following standard.

- Total sales during the most recent year of the reporting period, combined with those of the parent company, domestic or foreign (if any), are less than \$12 million regardless of the quantity of asbestos produced or imported.

The small manufacturer (including importer) exemption as written in *Small manufacturer* and *Small government* definitions (40 CFR 704.3) applies to domestic manufacturers and importers, but does not cover processors. Therefore, EPA proposes a definition for small processors, functionally identical to that established in 40 CFR 704.20 - Chemical substances manufactured or processed at the nanoscale (Ref. 16). EPA

proposes this definition because it is most similar to the small manufacturing (including importing) definition already promulgated. This definition would state: “Small processor means any processor whose total annual sales, when combined with those of its parent company (if any), are less than \$12 million.” Note that in the nanoscale rule, the total annual sales threshold is \$11 million. EPA increased the threshold to \$12 million to align with the non-volume portion of the TSCA small manufacturer definition, which was updated in 2020. The small manufacturer definition has a second standard that exempts companies on a chemical-by-chemical volume basis (i.e., 100,000-pound threshold when company sales are less than \$120 million), thus exempting small manufacturers for some chemicals but not for others. The second standard would not be appropriate to include in the small processor definition because the amount of asbestos in products may vary drastically. It is also not appropriate because EPA is not basing reporting requirements on volumes for this rule. Thus, the volume of asbestos is less applicable as a measure than sales.

EPA requests additional comment on how to best provide guidance for small processors of Libby Amphibole asbestos.

C. What is the reporting standard?

EPA is proposing that this rule would use the reporting standard used for certain other TSCA section 8(a) reporting requirements, including CDR. This standard requires that manufacturers (including importers) and processors report information to the extent that the information is known to or reasonably ascertainable by the manufacturer (including importer) or processor (see TSCA section 8(a)(2)). “Known to or reasonably ascertainable by” includes “all information in a person's possession or control, plus all

information that a reasonable person similarly situated might be expected to possess, control, or know” (40 CFR 704.3). This reporting standard requires reporting entities to evaluate their current level of knowledge of their manufactured products (including imports) or processed products, as well as evaluate whether there is additional information that a reasonable person, similarly situated, would be expected to know, possess, or control. This standard carries with it an exercise of due diligence, and the information-gathering activities that may be necessary for manufacturers (including importers) and processors to achieve this reporting standard may vary from case-to-case.

This standard requires that submitters conduct a reasonable inquiry within the full scope of their organization (not just the information known to managerial or supervisory employees). This standard may also entail inquiries outside the organization to fill gaps in the submitter’s knowledge. Such activities may, though not necessarily, include phone calls or email inquiries to upstream suppliers or downstream users or employees or other agents of the manufacturer (including importer) or processor, including persons involved in the research and development, import or production, or marketing of asbestos.

Examples of types of information that are considered to be in a manufacturer’s (including importer’s) or processor’s possession or control, or that a reasonable person similarly situated might be expected to possess, control, or know include: files maintained by the manufacturer (including importer) or processor such as marketing studies, sales reports, or customer surveys; information contained in standard references showing use information or concentrations of chemical substances in mixtures, such as a Safety Data Sheet (SDS) or a supplier notification; and information from the Chemical Abstracts Service (CAS) or from Dun & Bradstreet (D-U-N-S). This information may also include

knowledge gained through discussions, conferences, and technical publications.

EPA has provided CDR reporting guidance materials on this reporting standard, including hypothetical examples of applying the “known to or reasonably ascertainable by” reporting standard in the context of collecting processing and use data for CDR, which would be instructive for reporting under this rule as well (Ref. 9). Therefore, EPA anticipates some submitters under this proposed rule will be familiar with this reporting standard, and resources are available to support those submitters who may not be familiar with the standard.

EPA acknowledges that it is possible that a manufacturer (including importer) or processor, particularly an importer of articles containing asbestos (including as an impurity), may not have knowledge that they have imported asbestos and thus not report under this rule, even after they have conducted their due diligence under this reporting standard as described previously. Such an importer should document its activities to support any claims it might need to make related to due diligence.

In the event that a manufacturer (including importer) or processor does not have actual data (*e.g.*, measurements or monitoring data) to report to EPA, the manufacturer (including importer) or processor would be required to make “reasonable estimates” of such information. “Reasonable estimates” may rely, for example, on approaches such as mass balance calculations, emissions factors, or best engineering judgment.

D. When would reporting be required?

This proposed rule would result in a one-time reporting obligation. EPA proposes reporting for persons who have manufactured (including imported) or processed asbestos at any time during the four complete calendar years prior to the effective date of the final

rule. EPA anticipates that the four calendar years would be 2019 to 2022. These entities would report to EPA during a three-month submission period, which EPA proposes would begin six months following the effective date of the final rule. Therefore, manufacturers (including importers) and processors would have up to nine months following the effective date of the final rule to collect and submit all required information to EPA.

EPA believes that providing six months between the effective date of the rule and the start of the submission period would allow sufficient time for both the Agency to finalize the reporting tool and for submitters to familiarize themselves with the rule and compile the required information. Since this TSCA section 8(a) reporting rule would result in the collection of similar information to that collected under CDR, EPA anticipates some submitters would be familiar with the types of information requested and how to report. EPA believes that three months would be adequate time for submissions, in addition to the six-month period between the effective date and the start of the submission period.

EPA is asking for public comment on the submission period start date and duration (see Unit IV.), as well as alternative compliance timelines for small businesses.

E. How would information be reported?

EPA is proposing different reporting requirements based on a two-part knowledge-based reporting approach in order to obtain as complete a picture as possible of the manufacturing (including importing), processing, and use of asbestos. Because asbestos can be included in small quantities in some products, having a threshold concentration for reporting would be expected to eliminate much of the information that

may be useful to support EPA's TSCA risk evaluation and risk management efforts.

Therefore, EPA is proposing that reporting would be required whenever the presence of asbestos is known or reasonably ascertainable.

However, EPA is also aware that there may be circumstances under which a manufacturer (including importer), or processor is unable to provide a reliable quantity of the asbestos in their products because the percentage of asbestos in their products is not known or reasonably ascertainable by them. For those situations, EPA is proposing a short form (Form A) for attestation purposes. For other situations, submitters that can determine or estimate the quantity would provide more detailed information in the full form (Form B). EPA anticipates that most submitters would know or be able to estimate the quantity of the asbestos and would complete the full form.

1. Determining the need to report using Form A.

For entities that are aware of asbestos in their product, but unable to determine or estimate the quantity manufactured (including imported) or processed, submitters would provide a subset of the information required on Form B. This subset would consist of information related to manufacturing (including importing) or processing asbestos, including as an impurity, in an article, or as a component of a mixture, and information about the employees involved with such activities.

One of the goals of this rule is to ensure EPA has a complete picture of the status of asbestos in the U.S. Therefore, EPA is proposing a reporting approach that would ensure that even circumstances where asbestos appears in smaller or unknown quantities are captured. Some entities manufacturing (including importing) or processing asbestos as a component of a mixture or articles containing asbestos (e.g., the importers of

articles), may be aware of asbestos in their products but unable to determine or estimate the quantity of the asbestos for reporting purposes. Therefore, EPA is proposing to include a short form (Form A) for such entities that are aware of a quantity of asbestos in their products, but unable to determine (or estimate) the quantity manufactured (including imported) or processed of asbestos to report.

For a more detailed discussion of the data elements, please see Unit III.F. EPA anticipates that Form A will be the less common option of the two reporting forms.

2. Determining the need to report using Form B.

EPA proposes that if a quantity of asbestos in a product is known to or reasonably ascertainable by the submitter then the submitter must provide the more detailed reporting information required by Form B. For example, if submitters are able to determine that their quantity is close to 25 pounds (or another quantity value), they would be required to report using Form B.

Form B would require specific quantity information per asbestos type, more detailed processing information, and employee information (including employee exposure information). EPA is requesting public comments on whether other information, such as waste and disposal information, should be reported. For a more detailed discussion on specifics included in Form B, see Unit III.C.2.

EPA is requesting comment on whether there should be a threshold for the amount of asbestos when determining whether to report using Form B and, if so, whether the threshold should be concentration-based (e.g., a certain percentage of asbestos in the product) or annual volume-based (e.g., the total volume of asbestos manufactured [including imported] or processed). In addition, EPA is requesting comment on whether

any submitter under the threshold should alternatively report using Form A. Having a threshold for Form B but reporting using Form A for entities under the reporting threshold may decrease burden on certain submitters while still allowing EPA to obtain information on all instances where asbestos is a component of a mixture and all articles with known asbestos content. Asbestos can occur naturally as impurities in other products that may be handled in very large volumes, such as talc, vermiculite, and potentially other substances. A *de minimis* concentration could reduce the compliance determination and reporting burdens. Comments suggesting threshold levels should include the justification for that particular level.

F. What information would be reported in Form A and Form B?

EPA is proposing certain information to be reported in either Form A or Form B. Unit III.E. describes how to choose which form to use for reporting. This unit provides a more in-depth overview of the information to be reported. Each form has sections about respondent identification, mined or milled bulk asbestos, imported bulk asbestos, primary processor production, secondary processor production, importation of mixtures, and importation of articles. Form A is a subset of Form B. If a data element is included in Form B only, it is indicated by “(Form B only)” following the name of the data element.

1. Respondent identification information.

EPA is proposing that both Form A and B will include information associated with identifying the respondent company and site and information about contacts at the company or site who can respond to any clarifying or other follow up questions. Specifically, EPA is proposing that submitters report the following information (proposed 40 CFR 704.180(e)(3)):

- U.S. Parent Company Information;
- Authorized Official Contact Information;
- Technical Contact Information; and
- Site Information (including NAICs codes and total number of employees at site).

In addition, submitters would identify the activity for which they are reporting, selecting from the list provided in proposed 40 CFR section 704.180(e)(4)(i). If more than one activity applies, the submitter would indicate all that apply. Each activity and the associated data elements are described in the remainder of this Unit.

2. Mined, milled, or imported bulk asbestos or bulk materials containing asbestos, including as an impurity.

An asbestos mine or mill is an entity that either mines or mills asbestos. Mined or extracted asbestos-containing ore is further milled to produce bulk asbestos. Milling involves the separation of the fibers from the ore, grading and sorting the fibers, or fiberizing crude asbestos ore. An importer of Bulk Asbestos imports bulk asbestos into the customs territory of the U.S. EPA anticipates that companies that are mining, milling, or importing bulk asbestos will report using Form B, because the volume of asbestos is likely to be known or reasonably ascertainable by them.

For companies that are mining, milling, or importing talc, vermiculite, or another bulk material where asbestos can be found as an impurity, EPA anticipates that they would report using either Form A or Form B, based upon their knowledge of the amount of asbestos in their bulk material.

Specifically, EPA is proposing that sites involved in mining, milling, or importing asbestos or bulk materials containing asbestos report certain information associated with

those activities, as listed in proposed 40 CFR sections 704.180(e)(4)(ii) and (iii), and (e)(5). All submitters would report the applicable asbestos form associated with the mining, milling, or importing activity.

a. Bulk asbestos. In addition, EPA is proposing that sites involved in mining, milling, or importing bulk asbestos, for each asbestos type and for each year, report the quantity of asbestos and the disposition of asbestos. Table 3 in proposed 40 CFR section 704.180(e)(4)(ii)(B) provides a list of dispositions from which to select, including: used on site, sent to another U.S. site, exported, or disposed of. EPA is proposing that a site selecting “Disposed of within the U.S.” would provide additional explanation to indicate the quantity and type of disposal (e.g., disposed in a landfill).

b. Bulk materials containing asbestos. EPA is proposing that sites involved in mining, milling, or importing bulk materials containing asbestos also report the type of bulk material that is manufactured (including imported) or processed, and for each type of bulk material and year, report:

- The quantity of bulk material quantity by weight (Form B only);
- The percentage of asbestos in the bulk material (Form B only);
- The most specific identity of asbestos (Form B only);
- Information describing how you know the amount of asbestos in the bulk material (Form B only); and

- The disposition of the bulk material as described in Unit III.F.2.a.

3. Primary processors of asbestos (bulk processing material, other than milling), including as an impurity.

A primary processor starts with bulk asbestos or bulk materials containing

asbestos and makes a mixture that contains asbestos. A primary processor may simply mix or repackage different types or sizes of fibers and then sell that product. Mixtures that contain asbestos are products to which asbestos has been intentionally added and which can be used or processed further and incorporated into other products. For example, asbestos cement, asbestos paper, and asbestos-reinforced plastics are instances where asbestos is contained in a mixture. Primary processors are defined in the proposed 40 CFR section 704.180(a), a definition adapted from the definition of primary processor in the 1982 *Asbestos Reporting Requirements* Rule (see Unit II.C.1.).

EPA anticipates that primary processors starting with bulk asbestos are more likely to report using Form B while those starting with bulk materials containing asbestos may report using either Form A or Form B.

EPA is proposing that primary processors report, for each year, the total quantity of asbestos processed (Form B only) and the end product type (selected from Table 4 in proposed 40 CFR section 704.180(e)(4)(iv)(B)). For each product type, report by year:

- The most specific identity of asbestos (Form B only);
- The total annual production quantity of end product, using the unit of measure as listed in Table 4 in proposed 40 CFR section 704.180(e)(4)(iv)(B);
- The percentage of asbestos in the end product (Form B only);
- If the asbestos content is an impurity, how you know about the presence, amount, and type of asbestos (i.e., do you have test results (provide the results), how often is testing conducted, other methods for identifying the asbestos content); and
- The disposition of the end product (Form B only) as described in Unit III.F.2.a.

4. Secondary processor production (processing asbestos when a component of a

mixture and articles containing asbestos), including as an impurity.

Secondary processors are those who start with asbestos when it is a component of a mixture and incorporate the mixture into their own products. For example, persons who fabricate asbestos cement sheet by cutting the sheet to make an electrical switch board, or persons who make garments by cutting an asbestos-containing textile, are secondary processors. Secondary processors are defined in the proposed 40 CFR section 704.180(a), a definition adapted from the definition of primary processor in the 1982 *Asbestos Reporting Requirements Rule* (see Unit II.C.1.).

EPA anticipates that secondary processors may report using either Form A or Form B. EPA is proposing that secondary processors report, for each year, the total quantity of asbestos processed (Form B only) and the end product type (selected from Table 4 in proposed 40 CFR section 704.180(e)(4)(iv)(B)). For each product type, report by year:

- The most specific identity of asbestos and the quantity of asbestos (Form B only);
- The total annual production quantity of end product, using the unit of measure as listed in Table 4 in proposed 40 CFR section 704.180(e)(4)(iv)(B);
- The percentage of asbestos in the end product (Form B only);
- If the asbestos content is an impurity, how you know about the presence, amount, and type of asbestos (i.e., do you have test results [provide the results], how often is testing conducted, other methods for identifying the asbestos content); and
- The disposition of the end product (Form B only) as described in Unit III.F.2.a.

5. Importation of asbestos as a component of a mixture or articles that contain

asbestos, including as an impurity.

An importer of asbestos contained in a mixture or articles that contain asbestos, including as an impurity, imports these substances into the customs territory of the U.S.

EPA anticipates that an importer of products may report using either Form A or Form B. EPA is proposing that importers report, for each year, the total quantity of asbestos processed (Form B only) and the imported product type (selected from Table 4 in proposed 40 CFR section 704.180(e)(4)(iv)(B)). For each product type, report by year:

- Whether the imported product including asbestos is contained in a mixture or a part of an article;
- The most specific identity of asbestos and the quantity of asbestos (Form B only);
- The total annual import quantity of the imported product, using the unit of measure as listed in Table 4 of proposed 40 CFR section 704.180(e)(4)(iv)(B);
- The percentage of asbestos in the imported product (Form B only);
- Information about how you know about the presence, amount, and type of asbestos (i.e., do you have test results (provide the results), how often is testing conducted, other methods for identifying the asbestos content); and
- The disposition of the imported product (Form B only) as described in Unit III.F.2.a.

6. Employee information.

For each activity reported, EPA is proposing that submitters also report certain information about the number of employees involved with the activity. Specifically, EPA is proposing that submitters report the number of employees associated with the activity,

whether personal protective equipment was used and, if yes, the type of equipment used, and any workplace exposure measurement assessments such as monitoring data. When supplying the measurement assessment data, also include information about how the assessment was conducted and other explanations to help EPA better understand and use the data.

G. Did EPA consider additional data elements for the proposal?

When evaluating which data elements to include in this proposal, EPA also considered potentially requiring reporting on additional information related to current employee exposures, wastewater treatment, disposal information, and customer sites. EPA presently believes the additional information might be useful for a more in-depth analysis of the potential exposures associated with asbestos. However, EPA also presently believes that the proposed data elements described in Unit III.F. would provide sufficient information for use by EPA and other Federal agencies in potential actions involving asbestos, including EPA's TSCA risk evaluation and risk management activities. EPA chose not to include these additional data elements in this proposed rule in the interest of maintaining a manageable level of burden for reporting entities, while also considering the need for creating a manageable reporting tool.

EPA is seeking public comment on whether any additional data (particularly, information related to current employee exposures, wastewater treatment information, additional disposal information, and customer sites) should be added as required data elements on Form B.

1. Employee data.

EPA considered collecting a more detailed breakdown of the number and types of

employees by work category. This information would enable the agency to consider exposures to employees conducting different types of work at a site, including those conducting production, shipping or receiving, maintenance, waste management, or other activities.

EPA also considered collecting employee exposure information, including 8-hr time-weighted average exposures, 15- or 30-minute peak or maximum exposures, related statistical data (medians, arithmetic means, standard deviations, etc.), levels of detection and non-detectable measurements, and descriptions of sampling and analysis, such as sampling and analytical chemistry methods. Due to the anticipated burden for reporters in contrast to the usefulness of the data that the agency could collect, EPA is not including reporting on these additional employee data elements in this proposed rule.

2. Wastewater discharge and waste disposal data.

EPA considered collecting information related to asbestos or asbestos-containing discharges, including releases, wastes, and disposal data. These data included a description of any discharges, such as to water or to off-site public treatment facilities, and descriptions of solids disposal, such as to land-based facilities. Wastewater related information included volumes of wastewater, amount of asbestos in the wastewater, on-site treatment methods (if any), National Pollutant Discharge Elimination System (NPDES) permit numbers and copies of reports, transport to off-site treatment, and removed solids management. General waste and disposal information included the identity of the end product being disposed, the form of the waste, the quantity of asbestos in the waste, the type of land disposal facility (e.g., impoundment, waste pile, landfill, injection well), and whether the disposal is on- or off-site. Note, however, that EPA is

proposing that a site reporting “Disposed of within the U.S.” in response to Table 3 would provide additional explanation to indicate the quantity, address of the disposal facility, and type of disposal (e.g., disposed in a landfill). EPA believes this level of reporting on waste disposal data is sufficient for purposes of this data collection. Due to the anticipated burden for reporters in contrast to the usefulness of the data that the agency could collect, EPA is not including reporting on additional data elements related to wastewater discharge and waste disposal in this proposed rule beyond the disposal explanation that would be included in response to reporting “Disposed of within the U.S.” in response to Table 3.

3. Air emissions data.

EPA considered collecting information related to air emissions at facilities that manufacture (including import) or process asbestos or asbestos-containing mixtures and products. The information included sources of emissions, methods of air pollution control, descriptions of control devices, and pollution control equipment operation and testing frequency and methods. Due to the anticipated burden for reporters in contrast to the usefulness of the data that the agency could collect, EPA is not including reporting on these additional data elements in this proposed rule.

4. Customer sites data.

EPA also considered requiring additional information about the number of customers respondents have. As proposed, this action would only collect information about asbestos manufacturers (including importers) and processors. Additional customer information from companies selling a product could be useful in understanding the universe of asbestos users. For the reasons described previously, EPA is not including

reporting on these additional employee data elements in this proposed rule, however, EPA is requesting comment on requiring manufactures (including importers) and processors of asbestos that are selling a product that contains asbestos to report the number of customer sites they have.

H. How would information be submitted to EPA?

EPA is proposing to require electronic reporting similar to the requirements established in 2013 for submitting other information under TSCA (see 40 CFR 704.20(e)). EPA is proposing to require submitters to use EPA's CDX (Central Data Exchange), the Agency's electronic reporting portal, for all reporting under this rule. In 2013, EPA finalized a rule to require electronic reporting of certain information submitted to the Agency under TSCA sections 4, 5, 8(a), and 8(d) (78 FR 72818) (FRL-2013-28510). The final rule followed two previous rules requiring similar electronic reporting of information submitted to EPA for TSCA CDR and for premanufacture notices (PMNs). In proposing to require similar electronic reporting under this rule, EPA expects that electronic reporting would save time, improve data quality, and increase efficiencies for both the submitters and the Agency.

EPA developed the Chemical Information Submission System (CISS) for use in submitting data electronically to the Agency for TSCA sections 4, 5, 6, 8(a), 8(b), 8(d), 8(e), and Title VI. CISS, a web-based reporting tool housed within the CDX environment, provides submitters with user-friendly applications to build and submit data packages to EPA within a secure, encrypted environment. CISS applications provide for the capture of both fielded data as well as the attachment of additional information using a wide variety of file types. Submitted information is rendered into PDF and XML

formats, which are provided to submitters in the form of a Copy of Record.

EPA is proposing to require submitters to follow the same submission procedures used for other TSCA submissions, i.e., to register with EPA's CDX and use CISS to prepare a data file for submission. Registration enables CDX to authenticate user identity. To submit electronically to EPA via CDX, individuals must first register with CDX at <http://cdx.epa.gov/>. To register in CDX, the CDX registrant (also referred to as “Electronic Signature Holder” or “Public/Private Key Holder”) agrees to the Terms and Conditions, provides information about the submitter and organization, selects a username and password, and follows the procedures outlined in the guidance document for CDX available at <https://cdx.epa.gov/FAQ#CSPP>.

Within CDX, CISS is available under the “Submission for Chemical Safety and Pesticide Program (CSPP)” CDX flow. Users who have previously submitted under TSCA through CDX, including submitting information under TSCA sections 4 and 5, CDR, or reporting under the TSCA Inventory Notification (Active-Inactive) Requirements rule (82 FR 37520, Aug. 11, 2017) (FRL-9964-22), will already have the CSPP flow linked to their account. Users reporting to EPA using other CDX housed applications, including the Toxics Release Inventory TRI-MEweb, would be able to add the CSPP flow to their existing CDX accounts.

All submitters would be required to use CISS to prepare their submissions. CISS guides users through a “hands-on” process of creating an electronic submission. Once a user completes the relevant data fields and attaches appropriate PDF files, or other file types, such as XML files, the web-based tool validates the submission by performing a basic error check and makes sure all the required fields and attachments are provided and

complete. Further instructions for uploading PDF attachments or other file types, such as XML, and completing metadata information would be available through CISS reporting guidance.

CISS also allows the user to choose to “Preview,” “Save,” or “Submit” the data package. Once the submission process is initiated, the user is asked to certify the information and provide requested information to complete the submission process. The data package is then sent, in an encrypted state, to the Agency. The user can login to the application and check the submission status of their data package. Upon successful receipt of the submission by EPA, the submission status of the submissions will be flagged as “Completed” and a confirmation email will be sent to the submitter’s CDX inbox. The CDX inbox is used to notify the users when submissions are received by EPA or to notify users when a submission-specific communication has been received and how to locate and access the communication. Information on accessing the CDX user inbox is provided in the guidance document for CDX at <https://cdx.epa.gov/FAQ#CSPP>. To access CISS log into CDX using the link: <https://cdx.epa.gov/> and click on the appropriate user role associated with the CSPP data flow. For further instructions, visit <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/electronic-reporting-requirements-certain-information>. Procedures for reporting under this proposed rule would be similar.

EPA believes that electronic reporting reduces the reporting burden for submitters by reducing the cost and time required to review, edit, and transmit data to the Agency. It also allows submitters to share a draft submission within their organization, and more easily save a copy for their records or future use. Additionally, EPA believes that some of

the anticipated submitters under this proposed rule have experience with reporting electronically to EPA through CDX. The resource and time requirements to review and process data by the Agency will also be reduced and document storage and retrieval will require fewer resources. EPA expects to benefit from receiving electronic submissions and communicating electronically with submitters.

I. How does the rule address claims for treatment of confidential information?

In a separate rulemaking under development, EPA plans to propose new provisions concerning the assertion and treatment of CBI claims for information reported to or otherwise obtained by EPA under TSCA. Unless otherwise stated in specific TSCA regulations (such as those proposed here), EPA intends the proposed provisions to govern how CBI claims made for information submitted under TSCA, including information submitted under this part, will be asserted, reviewed, and maintained.

In this rulemaking, EPA is proposing in proposed 40 CFR section 704.180(h) that a person submitting a reporting form under this action may claim some information in the form as confidential at the time of submission, consistent with TSCA section 14. EPA is also proposing that certain data elements cannot be claimed as confidential:

- Site NAICS code in proposed 40 CFR section 704.180(e)(3)(v), because it represents a general description associated with the manufacture (including import) or processing of a chemical substance.
- Chemical and bulk material identities (as identified in proposed 40 CFR section 704.180(h)(1)(ii)(B)), because the chemical identities are listed in the asbestos definition in proposed 40 CFR section 704.180(a) or are general identities of bulk materials that are already publicly known.

- Responses that are blank or “not known or reasonably ascertainable” (as identified in proposed 40 CFR section 704.180(h)(1)(ii)(C)) because there is no data to claim as confidential.

- Health and safety study data (as identified in proposed 40 CFR section 704.180(h)(1)(ii)(D)), because, under TSCA section 14(b)(2), such information is not protected from disclosure. Note, however, that CBI claims may be asserted to the extent that disclosure of data from studies would reveal certain information as provided in proposed 40 CFR section 704.180(h)(1)(ii)(D)(1)-(3). The electronic reporting tool described in proposed 40 CFR section 704.180(i) enables the submitter of a health and safety study containing CBI claims to attach a public copy of the study, as described in proposed 40 CFR section 704.180(h)(2)(vi).

TSCA section 14 also requires that the submitter attest to a statement concerning the confidential status of the information, that they have a reasonable basis to conclude that release of the information would likely result in substantial harm to the competitive position of their business and that the information is not readily discoverable through reverse engineering. The submitter must certify that this statement and any substantiation provided are true and correct. This certification statement will be incorporated into the electronic reporting tool identified in proposed 40 CFR section 704.180(i).

TSCA section 14(c)(3) further requires that substantiation be provided at the time a confidentiality claim is asserted. However, TSCA section 14(c)(2) exempts certain information from that substantiation requirement (*e.g.*, specific production volume). Under the proposed rule, CBI claims for specific production or import volumes of the manufacturer need not be substantiated, as identified in proposed 40 CFR section

704.180(h)(2)(iv). For all other information submitted under this proposed rule, submitters are required to substantiate their confidentiality claims at the time of submission. Substantiation questions are listed in proposed 40 CFR section 704.180(h)(2)(iii) and will be incorporated into the electronic reporting tool identified in proposed section 704.180(i). Responses to the substantiation questions that are not specific to the data element for which a claim of confidentiality is being substantiated may be inadequate to justify confidential protection.

Any information which is claimed as confidential will be disclosed by EPA only in accordance with the procedures and requirements of TSCA section 14 and 40 CFR part 2, or any TSCA-specific CBI provisions that may in the future replace or supplement portions of 40 CFR part 2. TSCA section 14(b)(2) limits confidentiality protections for health and safety studies and information from health and safety studies regarding chemical substances that have been offered for commercial distribution, except to the extent such studies or information reveals “information that discloses processes used in the manufacturing (including importing) or processing of a chemical substance or mixture or, in the case of a mixture, the portion of the mixture comprised by any of the chemical substances in the mixture”. Additionally, in some cases EPA may consider information contained in a study as not part of a *health and safety study* as defined in TSCA section 3(8). The workplace exposure measurement data listed in proposed 40 CFR section 704.180(e)(5)(iii) are from studies pertaining to human exposure in the workplace and therefore are considered health and safety study data. Submitters asserting a confidentiality claim for such information in health and safety studies (as well as for other information claimed as confidential) will be required to submit a sanitized copy of

the study, removing only that information which is claimed as confidential. See proposed 40 CFR section 704.180(h)(1)(ii)(D) for additional information regarding health and safety studies and proposed 40 CFR section 704.180(h)(2)(vi)) regarding public copies.

J. What are the recordkeeping requirements?

EPA is proposing that each person who reports under this part must maintain records that document information reported under this part and, in accordance with TSCA, permit access to and the copying of such records by EPA officials. Consistent with the CDR rule, EPA is proposing a five-year recordkeeping period, beginning on the last date of the submission period. The five-year retention requirement generally corresponds with the statute of limitations for TSCA violations. Information in this one-time data collection will be used by EPA for risk evaluation and risk management activities, and the companies must maintain the records for five years in the event that EPA has follow-up questions as the agency activities are completed. Further, EPA believes the burden of retaining these records, which are likely electronic, is minimal.

IV. Request for Comments

EPA requests comment on the content of this proposed rule and the Economic Analysis prepared in support of this proposed rule (Ref. 2). In addition, EPA is providing a list of issues on which the Agency is specifically requesting public comment. EPA encourages all interested persons to submit comments on these issues, and to identify any other relevant issues as well. This input will assist the Agency in developing a final rule that successfully addresses information needs while minimizing potential reporting burdens associated with the rule. EPA requests that commenters making specific recommendations include supporting documentation where appropriate.

1. EPA is soliciting comment on the total number of manufactures (including importers) and processors that will be impacted by the promulgation of this rule, and on the related burden and costs for reporting. In addition, due to the lack of information on the extent to which asbestos occurs as an impurity, EPA was unable to determine the number of potential manufacturers (including importers) or processors of asbestos as an impurity that would report under this rule. EPA is soliciting public comment on the number of manufacturers (including importers) and processors that may be subject to the proposed rule due to the presence of impurities in their products, and on the related burden and cost for reporting.

2. As described further in Unit III.B., because there is no existing small processors definition that would be applicable under TSCA section 8(a), EPA is requesting comment on how to best provide guidance for small processors of Libby Amphibole asbestos.

3. As described further in Unit III.C.2, EPA is seeking comment on what additional guidance, if any, might be useful for helping entities, including small businesses, understand the reporting standard, as well as to how the reporting standard would apply to impurities.

As described further in Unit III.D., EPA is requesting public comment on the submission start date and duration, including for small businesses

4. As described further in Unit III.E.2., EPA is requesting comment on whether there should be a threshold for reporting using Form B and, if so, whether the threshold should be concentration-based (e.g., a certain percentage) or annual volume-based. In addition, EPA is requesting comment on whether any submitter under the threshold should alternatively report using Form A. Having a threshold for Form B may decrease

burden on certain submitters while still allowing EPA to obtain information on all bulk materials, mixtures, and articles with known asbestos content. The substances subject to the rule can occur naturally as impurities in other products that may be handled in very large volumes, such as talc, vermiculite, and potentially other substances. A *de minimis* concentration could reduce the compliance determination and reporting burdens. Comments suggesting threshold levels should include the justification for that particular level.

5. As described further in Unit III.F. and first mentioned in Unit III.F.3., EPA is requesting comment on whether there should be other end product types listed in Table 4 in proposed 40 CFR section 704.180(e)(4)(iv)(B). In addition, EPA is interested in whether the units of measure listed with the product types are appropriate.

6. As described further in Unit III.G., EPA identifies additional data elements related to employee data, wastewater discharge and waste disposal, air emissions data and customer sites data, considered for this proposed rule and is soliciting public comment on whether any of the additional data elements should be included in the action. While EPA believes the proposed data elements in Unit III.F provide sufficient information for use by EPA and other Federal agencies in potential actions involving asbestos, EPA is seeking comment on whether any additional data elements should be included in this action.

7. As described further in Unit III.AC.2, EPA is seeking comment on what additional guidance, if any, might be useful

V. References

The following is a listing of the documents that are specifically referenced in this

document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Final Rule; Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions. *Federal Register*. 54 FR 29460. July 12, 1989. (FRL- 3476-2).

2. EPA, OPPT. Economic Analysis for the Proposed TSCA Section 8(a) Reporting and Recordkeeping Requirements for Asbestos. February 4, 2022.

3. EPA. Learn About Asbestos. EPA Website.
<https://www.epa.gov/asbestos/learn-about-asbestos>.

4. EPA. IRIS Toxicological Review of Libby Amphibole Asbestos (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/635/R-11/002F, 2014.
https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/1026tr.pdf.

5. Agency for Toxic Substances and Disease Registry (ATSDR). Summary Report: Exposure to Asbestos-Containing Vermiculite from Libby, Montana, at 28 Processing Sites in the United States. U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Atlanta, GA, 2008.
https://www.atsdr.cdc.gov/asbestos/sites/national_map/Summary_Report_102908.pdf
and https://hero.epa.gov/hero/index.cfm/reference/details/reference_id/783510.

6. EPA. Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. U.S. Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention

(OCSPP). Washington, DC, EPA-740-R1-8012, 2020.

[https://www.epa.gov/sites/default/files/2020-](https://www.epa.gov/sites/default/files/2020-12/documents/1_risk_evaluation_for_asbestos_part_1_chrysotile_asbestos.pdf)

[12/documents/1_risk_evaluation_for_asbestos_part_1_chrysotile_asbestos.pdf](https://www.epa.gov/sites/default/files/2020-12/documents/1_risk_evaluation_for_asbestos_part_1_chrysotile_asbestos.pdf).

7. National Toxicology Program (NTP). Asbestos, CAS No. 1332-21-4. In *Report on Carcinogens* (15th ed.): U.S. Department of Health and Human Services, Public Health Service, Research Triangle Park, NC, 2001.

<https://ntp.niehs.nih.gov/ntp/roc/content/profiles/asbestos.pdf>.

8. EPA. Determining If You Are a Manufacturer or Importer for Reporting. EPA Website. <https://www.epa.gov/chemical-data-reporting/determining-if-you-are-manufacturer-or-importer-required-report>.

9. EPA. Instructions for Reporting 2020 TSCA Chemical Data Reporting (pp. 45-47): U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT) Washington, DC, 2020. https://www.epa.gov/sites/default/files/2020-12/documents/instructions_for_reporting_2020_tsca_cdr_2020-11-25.pdf.

10. EPA. TSCA Chemical Data Reporting Fact Sheet: Articles. U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT) Washington, DC, 2012. https://www.epa.gov/sites/default/files/documents/articlesfactsheetforcdr_reporting_080312.pdf.

11. Asbestos Disease Awareness Organization (ADAO), American Public Health Association (APHA), Center for Environmental Health (CEH), Environmental Health Strategy Center (EHSC), Environmental Working Group (EWG), Safer Chemicals, Healthy Families (SCHF) to Andrew Wheeler, Administrator, U.S. Environmental

Protection Agency. Petition under TSCA Section 21 to Require Reporting on Asbestos Manufacture, Importation and Use under TSCA Section 8(a). September 27, 2018.

<https://www.epa.gov/sites/default/files/2018-10/documents/adao-asbestos-cdr-petition-all.pdf>.

12. The Attorneys General of Massachusetts, California, Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia to Andrew Wheeler, Administrator, U.S. Environmental Protection Agency. Petition Under TSCA Section 21(a) for EPA to Issue an Asbestos Reporting Rule to Require Reporting under TSCA Section 8(a). January 31, 2019. *https://www.epa.gov/sites/default/files/2019-02/documents/tsca_section_21_rulemaking_petition_for_asbestos_reporting_1_31_2019_2.pdf*.

13. Settlement Agreement, Case Nos. 3:19-CV-00871-EMC; 3:19-CV-03807-EMC. Asbestos Disease Awareness Organization, et al., Plaintiffs, v. U.S. Environmental Protection Agency, et al., Defendants. June 7, 2021.

14. EPA. Scope of the Risk Evaluation for Asbestos. U.S. Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention (OCSPP), Washington, DC, EPA-740-R1-7008, 2017. *https://www.epa.gov/sites/default/files/2017-06/documents/asbestos_scope_06-22-17.pdf*.

15. Occupational Safety and Health Administration (OSHA). OSHA Occupational Chemical Database, Talc (Containing Asbestos). United States Department of Labor. *<https://www.osha.gov/chemicaldata/276>*.

16. Chemical Substances When Manufactured or Processed as Nanoscale

Materials; TSCA Reporting and Recordkeeping Requirements, 40 CFR part 704 (2017).
<https://www.federalregister.gov/documents/2017/01/12/2017-00052/chemical-substances-when-manufactured-or-processed-as-nanoscale-materials-tsca-reporting-and->

17. EPA. Information Collection Request (ICR) for the TSCA Section 8(a) Reporting and Recordkeeping Requirements for Asbestos (Proposed Rule). EPA ICR No. 2711.01 and OMB No. 2070-[NEW]. February 4, 2022.

18. U.S. Geological Survey (USGS). Asbestos Statistics and Information: Mineral Commodity Summaries. 2021. *<https://pubs.usgs.gov/periodicals/mcs2021/mcs2021-asbestos.pdf>*

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *<https://www.epa.gov/laws-regulations/laws-and-executive-orders>*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an economic analysis of the potential costs and benefits associated with this action (Ref. 2), which is available in the docket and summarized in Unit I.E. (Ref. 2).

B. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule have been submitted to OMB for review and comment under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned the EPA ICR No. 2711.01 (Ref. 17). You can find a copy of the ICR in the docket for this action, and it is briefly summarized here.

The information collection activities in the proposed rule include a one-time reporting requirement and recordkeeping requirements. Companies that manufacture (including import) or process asbestos must report certain information to EPA and maintain corresponding records.

Respondents/affected entities: Chrysotile asbestos manufacturers (including importers) and processors. See Unit I.A. for a list of potentially affected entities.

Respondent's obligation to respond: Mandatory. TSCA section 8(a) and proposed 40 CFR section 704.180.

Estimated number of respondents: 27.

Frequency of response: One time.

Total estimated burden: 1,157 hours (per report). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$ 99,496 (per report), which includes no annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the ***Federal Register*** or by other appropriate means, such as on the related collection instrument or form, if

applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this proposed rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular ICR by selecting "Currently under Review - Open for Public Comments" or by using the search function. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *Federal Register*]. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are persons who have manufactured (including imported), or processed asbestos, including asbestos as a component of a mixture, asbestos in articles, and asbestos as an impurity in the four full calendar years prior to the effective date of this rule. EPA estimates that at least 14 small firms will be affected by the proposed rule. Of those small firms, which include importers of articles and processors, 12 are expected to have cost impacts of less than 1% of annual revenues, one is expected to have impacts between 1-3%, and one is expected to have impacts of more than 3% of annual revenues. These estimates do not include firms that are impacted

by the requirement to report for impurities, which EPA was unable to identify. Based on information available to EPA, the Agency does not believe there are a substantial number of such firms. Further, EPA believes that impacts to any such firms would not significantly alter the Agency's analysis under the RFA. Details of this analysis are presented in the Economic Analysis (Ref. 2).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). In EPA's experience, states do not engage in the activities that would make them subject to the requirements in the proposed rule. As such this action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have substantial direct effects on tribal government because asbestos is not manufactured (including imported) or processed by tribes and would not impose substantial direct compliance costs on tribal

governments.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045, because it is a data gathering rulemaking and does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution in Commerce, or Use

This action is not a “significant energy action” under Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of OMB's Office of Information and Regulatory Affairs as a “significant energy action.” This action is not expected to affect energy use, energy supply or energy prices.

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR

7629, February 16, 1994) because this action does not establish an environmental health or safety standard. The collected information, however, will be used by EPA and other Federal agencies to inform considerations of potential future actions involving asbestos, potentially including risk evaluation and risk management activities that could benefit underserved communities and indigenous peoples.

List of Subjects in 40 CFR Part 704

Chemicals, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 22, 2022.

Michal Freedhoff,

Assistant Administrator,

Office of Chemical Safety and Pollution Prevention.

For the reasons set forth in the preamble, it is proposed that 40 CFR chapter I be amended as follows:

PART 704 – REPORTING AND RECORDKEEPING REQUIREMENTS

1. The authority citation for part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Add § 704.180 to subpart B to read as follows:

Subpart B Chemical-Specific Reporting and Recordkeeping Rules

* * * * *

§ 704.180 Asbestos.

(a) *Definitions.*

The definitions in subpart A of this part apply to § 704.180 unless otherwise specified in this section.

Asbestos is a collective term meaning any of the substances listed in Table 1 of this paragraph.

Table 1 in § 704.180(a) – CASRN of Asbestos Types

CASRN	Asbestos Type
1332-21-4	Asbestos
132207-32-0	Chrysotile
12001-28-4	Crocidolite
2172-73-5	Amosite
77536-67-5	Anthophyllite
77536-68-6	Tremolite
77536-66-4	Actinolite
NA	Libby Amphibole (mainly consisting of tremolite [CASRN 77536-68-6], winchite [CASRN 12425-92-2], and richterite [CASRN 17068-76-7])

Bulk asbestos means any quantity of asbestos fiber of any type or grade, or combination of types or grades, that is mined or milled with the purpose of obtaining

asbestos. This term does not include asbestos that is produced or processed as a contaminant or an impurity.

Bulk materials containing asbestos means bulk materials in which asbestos is being mined or milled as a contaminant or an impurity, such as in vermiculite or talc.

Chemical Information Submission System or *CISS* means EPA's electronic, web-based reporting tool for the completion and submission of CDR data, reports, and other information, or its successors.

Form A means an abbreviated form for persons that know or can reasonably ascertain that they manufactured (including imported) or processed asbestos, including as an impurity, during the reporting period described in paragraph (f) but do not know and cannot reasonably ascertain the amount of asbestos manufactured (including imported) or processed by them.

Form B means the standard form to be used by persons that know or can reasonably ascertain that they manufactured (including imported) or processed asbestos, including as an impurity, during the reporting period described in paragraph (f) and know or can reasonably ascertain how much asbestos they manufactured (including imported) or produced.

Primary processor means a person that starts with bulk asbestos or bulk materials containing asbestos and makes a mixture that contains asbestos as a component.

Secondary processor means a person that further processes asbestos, after primary processing of asbestos is completed, as a component of a mixture, or an article containing asbestos.

Small processor means any processor whose total annual sales, when combined

with those of its parent company (if any), are less than \$12 million.

(b) Substance for which reports must be submitted.

The requirements of this section apply to asbestos, including asbestos in bulk form, as a component of a mixture, in an article, and as an impurity.

(c) Persons who must report.

Persons who have manufactured (including imported), or processed asbestos, including asbestos as a component of a mixture, asbestos in articles, and asbestos as an impurity in the four full calendar years prior to the effective date of this rule must report under this subpart.

(d) Persons exempt from reporting.

A person who is subject to reporting requirements pursuant to paragraph (c) is exempt from the requirements in this subpart to the extent that the person and that person's use of asbestos is described in this paragraph.

(1) Non-isolated intermediate. A person who manufactures or proposes to manufacture asbestos, as described in paragraph (c), solely as a non-isolated intermediate is exempt from the reporting requirements of this subpart.

(2) Research and development. A person who manufactures (including imports), processes, or proposes to manufacture (including import), or process asbestos, as described in paragraph (c), only in small quantities solely for research and development is exempt from the reporting requirements of this subpart.

(3) Small manufacturers (including importers) and processors. Small manufacturers (including importers) and processors are exempt from the reporting requirements of this subpart for the substance Libby Amphibole only.

(e) *Reporting information to EPA.*

Persons described in paragraph (c) of this section must report to EPA the following information, to the extent known to or reasonably ascertainable by them. In the event that specific numeric data is not known or is not reasonably ascertainable by the submitter, then reasonable estimates may be submitted.

(1) *Required forms.* Report using the appropriate Form, based on whether you know or can reasonably ascertain a quantity for asbestos.

(i) *Form A.* Report using Form A if you know or can reasonably ascertain that asbestos is a component of a mixture or article but are unable to determine the asbestos quantity by weight.

(ii) *Form B.* Report using Form B if you know or can reasonably ascertain a quantity for asbestos.

(2) *A certification statement signed and dated by an authorized official of the submitter company.* The authorized official must certify that the submitted information has been completed in compliance with the requirements of this part and that the confidentiality claims made on Form A or Form B are true and correct. The certification must be signed and dated by the authorized official for the submitter company, and provide that person's name, official title, and email address.

(3) *Company and plant site information.* The following currently correct company and plant site information must be reported for each site at which a reportable chemical substance is manufactured (including imported) or processed (see § 704.3 for the “site” for importers):

(i) *Company name.* The highest-level U.S. parent company name, address, and

Dun and Bradstreet D-U-N-S® (D&B) number. A submitter under this part must obtain a D&B number for the U.S. parent company if none exists.

(ii) *Authorized official.* The name of a person who will serve as Authorized Official for the submitter company, and who will be able to sign the certification statement as described in paragraph (e)(1), the Authorized Official's full mailing address, telephone number, and e-mail address.

(iii) *Point of contact.* The name of a person who will serve as technical contact for the submitter company, and who will be able to answer questions about the information submitted by the company to EPA, the contact person's full mailing address, telephone number, and e-mail address.

(iv) *Site information.* The site name, full street address, including the county or parish (or other jurisdictional indicator) in which the plant site is located. Also report the following:

(A) The appropriate D&B number for the plant site. If none exists, you must obtain a D&B number for the reported site.

(B) Other site identification numbers, including the Facility Registry Service (FRS) identification number, if they exist.

(v) *Applicable NAICS code.* The six-digit North American Industry Classification System (NAICS) code(s) of the site.

(vi) *Number of employees.* The total number of employees at the site. Select from among the ranges of employees listed in Table 2 of this paragraph and report the corresponding code (i.e., W1 through W8):

Table 2 in § 704.180(e)(3)(vi) – Codes for Reporting Number of Employees

Code	Range
W1	Fewer than 10 employees
W2	At least 10 but fewer than 25 employees
W3	At least 25 but fewer than 50 employees
W4	At least 50 but fewer than 100 employees
W5	At least 100 but fewer than 500 employees
W6	At least 500 but fewer than 1,000 employees
W7	At least 1,000 but fewer than 10,000 employees
W8	At least 10,000 employees

(4) *Activity information.* The following activity information must be reported.

(i) *Type of activity at reporting site.* Report all that apply.

(A) Mining of bulk asbestos or bulk materials containing asbestos.

(B) Milling of bulk asbestos or bulk materials containing asbestos.

(C) Importing of bulk asbestos or bulk materials containing asbestos.

(D) Primary processing of bulk asbestos or bulk materials containing asbestos.

(E) Secondary processing of mixtures or articles containing asbestos.

(F) Importing of mixtures or articles containing asbestos.

(ii) *Form B only.* For mining, milling, or importing of bulk asbestos reported under activity in paragraph (e)(4)(i)(A) through (C), report by year:

(A) The most specific asbestos type that applies. Select from among the asbestos types listed in Table 1 of paragraph (a) in this section. If the specific asbestos type is not known or reasonably ascertainable, report the general listing, asbestos CASRN 1332-21-4.

(B) For each asbestos type, report

(1) Quantity of asbestos, in pounds.

(2) Disposition of asbestos (see Table 3 in paragraph (e)(4)(ii)(B) of this section).

Table 3 in § 704.180(e)(4)(ii)(B) – Disposition

Code	Disposition Description
1	Used on-site, including further processed.
2	Stored on-site
3	Sent to another U.S. site (including intra-company transfer) for use or processing.
4	Stored at another U.S. site (including intra-company transfer)
5	Exported outside of the U.S. without further processing
6	Disposed of within the U.S. (explain)
7	Other (explain)

(iii) Reporting information for mining, milling, or importing of bulk materials containing asbestos. For mining, milling, or importing of bulk materials containing asbestos reported under the activity identified in paragraph (e)(4)(i)(A) through (C), report by year:

(A) Bulk material type manufactured or processed (e.g., talc, vermiculite).

(B) For Form B only, for each bulk material type:

(1) Quantity of bulk material manufactured or processed.

(2) Percent asbestos by weight in bulk material.

(3) The most specific asbestos type that applies. Select from among the asbestos types listed in Table 1 in paragraph (a) of this section. If the specific asbestos type is not known or reasonably ascertainable, report the general listing, asbestos CASRN 1332-21-4.

(4) Any testing of or test results assessing the asbestos content of your bulk material in the applicable reporting years.

(i) If testing was conducted, specify how often testing was conducted on the presence of asbestos in your bulk material and what method and type of test was used for determining asbestos content, and provide the test results.

(ii) If testing was not conducted, explain how you knew or reasonably ascertained the presence and amount of asbestos in the bulk materials.

(C) For each bulk material type, the disposition of bulk material (see Table 3 in paragraph (e)(4)(ii)(B) of this section).

(iv) *Reporting information for primary processors.* For primary processing reported under activity identified in paragraph (e)(4)(i)(D) of this section, report by year:

(A) For Form B only, the total quantity of asbestos processed.

(B) End product type, selecting from products listed in Table 4 in paragraph (e)(4)(iv)(B) of this section. If your end product is not listed, report “other” and provide a brief description. For each end product type, report:

(1) For Form B only, the most specific asbestos type that applies. Select from among the asbestos types listed in Table 1 in paragraph (a) of this section. If the specific asbestos type is not known or reasonably ascertainable, report the general listing, asbestos CASRN 1332-21-4. Report also the total annual quantity of asbestos type processed.

(2) The total annual production quantity of end products produced, using the associated unit of measure listed in Table 4 in paragraph (e)(4)(iv)(B) of this section. If a unit of measure is not listed, provide the unit of measure associated with the quantity reported.

(3) For Form B only, the percentage of asbestos in the end product.

(4) For Form B only, the disposition of the end product (see Table 3 in paragraph (e)(4)(ii)(B) of this section).

(5) For Form B only, explain if you tested or received test results assessing the asbestos content of your end product in the applicable reporting years.

(i) If testing was conducted, specify how often testing was conducted on the presence of asbestos in your end product and what method and type of test was used for determining asbestos content, and provide the test results.

(ii) If testing was not conducted, explain how you knew or reasonably ascertain the presence and amount of asbestos in the end product.

Table 4 in § 704.180(e)(4)(iv)(B) – End Product Types

Code	Name	Unit of Measure
Papers, Felts, or Related Products		
01	Commercial paper	Short Tons
02	Rollerboard	Short Tons
03	Millboard	Short Tons
04	Pipeline wrap	Short Tons
05	Beater-add gasketing paper	Short Tons
06	High-grade electrical paper	Short Tons
07	Unsaturated roofing felt	Short Tons
08	Saturated roofing felt	Short Tons
09	Flooring felt	Short Tons
10	Corrugated paper	Short Tons
11	Specialty paper (specify generic name)	Short Tons
12	Other (specify generic name)	(Specify)
Floor Coverings		
13	Vinyl asbestos floor tile	Square yards
14	Asbestos felt backed vinyl flooring	Square yards
15	Other (specify generic name)	(Specify)
Asbestos Cement Products		
16	A/C pipe and fittings	Short Tons
17	A/C sheet, flat	100 sq. ft.
18	A/C sheet corrugated	100 sq. ft.
19	A/C shingle	Squares
20	Other (specify generic name)	(Specify)
Transportation Friction Materials (including aircrafts, marine vessels, railroad engine and railcars, and other vehicles)		
21	Drum brake lining (light-medium vehicle)	Pieces
22	Disc brake pads (light-medium vehicle)	Pieces
23	Disc brake pads (heavy vehicle)	Pieces
24	Brake block (heavy equipment)	Pieces

25	Clutch facings (all)	Pieces
26	Automatic transmission friction components	Pieces
27	Friction materials (industrial and commercial)	Pieces
28	Custom automotive body filler	Pieces
29	Transmissions	Pieces
30	Mufflers	Pieces
31	Radiator top insulation	Pieces
32	Radiator sealant	Pieces
33	Other (specify generic name)	(Specify)
Appliances		
34	Appliance Industrial and consumer (specify generic name)	Pieces
35	Other (specify generic name)	(Specify)
Construction Products		
36	Boiler and furnace baffles	Pieces
37	Decorated building panels	Pieces
38	Asbestos cement sheet	Pieces
39	Flexible Air Conductor	Pieces
40	Hoods and Vents	Pieces
41	Portable construction building	Pieces
42	Roofing, saturated	Pieces
43	Roof shingles	Pieces
44	Wallboard	Pieces
45	Wall/roofing panels	Pieces
46	Other (specify generic name)	(Specify)
Electrical Products and Components		
47	Cable insulation	Pieces
48	Electronic motor components	Pieces
49	Electrical resistance supports	Pieces
50	Electrical switchboard	Pieces
51	Electrical switch supports	Pieces
52	Electrical wire insulation	Pieces
53	Motor armature	Pieces
54	Other (specify generic name)	(Specify)
Fire and Heat Shielding Equipment and Components		
55	Arc deflectors	Pieces
56	Fire doors	Pieces
57	Fireproof absorbent paper	Short tons
58	Heat shields	Pieces
59	Molten metal handling equipment	Pieces
60	Oven and stove insulation	Short tons

61	Pipe wrap	Pieces
62	Stove lining, wood and coal	Pieces
63	Stove pipe rings	Pieces
64	Sleeves	Pieces
65	Thermal Insulation	Short tons
66	Other (specify generic name)	(Specify)
Textiles and Clothing		
67	Cloth	Pounds
68	Thread, yarn, lap, roving, cord, rope, or wick	Pounds
69	Aprons	Pieces
70	Boots	Pieces
71	Gloves and mittens	Pieces
72	Hats and helmets	Pieces
73	Overgaiters	Pieces
74	Suits	Pieces
75	Aluminized cloth	Short Tons
76	Rope or braiding	Short Tons
77	Yarn, lap or roving	Short Tons
78	Wicks	Short Tons
79	Bags	Pieces
80	Belting	Short Tons
81	Blankets	Pieces
82	Carpet padding	Short Tons
83	Commercial/industrial dryer felts	Short Tons
84	Draperies	Pieces
85	Drip cloths	Pieces
86	Fire hoses	Pieces
87	Ironing board pads and insulation	Pieces
88	Mantles, lamp or catalytic heater	Pieces
89	Packing and packaging components	Pieces
90	Piano and organ felts	Pieces
91	Rugs	Pieces
92	Tape	Pieces
93	Theater curtains	Pieces
94	Umbrellas	Pieces
95	Other (specify generic name)	(Specify)
Gaskets		
96	Sheet gasketing, rubber encapsulated beater addition	Pieces
97	Sheet gasketing, rubber encapsulated compressed	Pieces
98	Compressed sheet gasketing (other)	Pieces

99	Metal reinforced gaskets	Pieces
100	Automotive gaskets	Pieces
101	Other (specify generic name)	(Specify)
Marine Equipment and Supplies		
102	Caulks, marine	Pounds
103	Liners, pond or canal	Pieces
104	Marine bulkheads	Pieces
105	Other (specify generic name)	(Specify)
Paints, Coatings, Sealants and Compounds		
106	Asphaltic compounds	Pounds
107	Automotive/truck body coatings	Gallons
108	Buffing and polishing compounds	Pounds
109	Caulking and patching compounds	Pounds
110	Drilling fluid	Gallons
111	Flashing compounds	Pounds
112	Furnace cement	Pounds
113	Glazing compounds	Pounds
114	Plaster and stucco	Pounds
115	Pump valve, flange and tank sealing components	Pieces
116	Roof coatings	Gallons
117	Textured paints	Gallons
118	Tile cement	Pounds
119	Other (specify generic name)	(Specify)
Other Products		
120	Sheet gasketing (other than beater-add)	Square Yards
122	Packing	Pounds
123	Paints and surface coatings	Gallons
124	Adhesives and sealants	Gallons
125	Asbestos-reinforced plastics	Pounds
126	Insulation materials not elsewhere classified (specify generic name)	(Specify)
127	Mixed or repackaged asbestos	Short Tons
128	Aerial distress flares	Pieces
129	Acoustical product	Pieces
130	Ammunition wadding	Pieces
131	Ash trays	Pieces
132	Baking sheets	Pieces
133	Blackboards	Pieces
134	Candlesticks	Pieces
135	Chemical tanks and vessels	Pieces

136	Filters	Pieces
137	Grommets	Pieces
138	Gun grips	Pieces
139	Jewelry making equipment	Pieces
140	Kilns	Pieces
141	Lamp sockets	Pieces
142	Light bulbs (all types)	Pieces
143	Linings for vaults, safes, humidifiers and filing cabinets	Pieces
144	Phonograph records	Pieces
145	Pottery clay	Pounds
146	Welding rod coatings	Pieces
147	Other (specify generic name)	(Specify)

(v) *Reporting information for secondary processors.* For secondary processing reported under the activity identified in paragraph (e)(3)(i)(E) of this section, report by year:

(A) For Form B only, the estimated total quantity of asbestos processed.

(B) End product type listed in Table 4 in paragraph (e)(4)(iv)(B) of this section.

For each product type, report:

(1) For Form B only, the most specific asbestos type that applies. Select from among the asbestos types listed in Table 1 in paragraph (a) of this section. If the specific asbestos type is not known or reasonably ascertainable, report the general listing, asbestos CASRN 1332-21-4. Also report the quantity of asbestos.

(2) The total annual production quantity of the end products produced, using the associated unit of measure listed in Table 4 in paragraph (e)(4)(iv)(B) of this section.

(3) For Form B only, the percentage of asbestos in the end product.

(i) If testing was conducted, specify how often testing was conducted on the presence of asbestos in your products and what method and type of test was used for

determining asbestos content, and provide the test results.

(ii) If testing was not conducted, explain how you knew or reasonably ascertained the presence and amount of asbestos in the end product.

(4) For Form B only, the disposition of the end product (see Table 3 in paragraph (e)(4)(ii)(B) of this section).

(vi) *Reporting information for importers.* For importing reported under activity identified in paragraph (e)(4)(i)(F) of this section, report by year:

(A) For Form B only, the estimated total quantity of asbestos imported.

(B) Imported product type (Table 4 (e)(4)(iv)(B)). For each imported product type, report:

(1) Whether the imported product is a mixture or an article.

(2) For Form B only, the most specific asbestos type that applies. Select from among the asbestos types listed in Table 1 in paragraph (a) of this section. If the specific asbestos type is not known or reasonably ascertainable, report the general listing, asbestos CASRN 1332-21-4. Also report the quantity of asbestos type.

(3) The total annual import quantity of the imported product, using the associated unit of measure listed in Table 4 in paragraph (e)(4)(iv)(B) of this section.

(4) For Form B only, the percentage of asbestos in the product.

(5) For Form B only, explain if you tested or received test results assessing the asbestos content of your imported product in the applicable reporting years.

(i) If testing was conducted, specify how often testing was conducted on the presence of asbestos in your imported product and what method and type of test was used for determining asbestos content, and provide the test results.

(ii) If testing was not conducted, explain how you knew or reasonably ascertained the presence and amount of asbestos in the imported product.

(6) For Form B only, the disposition of the imported product (see Table 3 in paragraph (e)(4)(ii)(B) of this section).

(5) *Employee information.* For each activity reported, report the following information about employees at the associated site:

(i) Number of employees involved with activity. Select from among the ranges of employees listed in Table 2 in paragraph (e)(3)(vi) of this section and report the corresponding code (i.e., W1 through W8).

(ii) Is personal protective equipment used? If yes, identify the type(s) of personal protective equipment used.

(iii) For Form B only, submit any workplace exposure measurement assessments and data (e.g., monitoring).

(f) *When to report.*

All information reported to EPA under this section must be submitted during the applicable submission period. The submission period shall begin six months following the effective date of this rule and last for three months.

(g) *Recordkeeping requirements.*

Each person who reports under this part must maintain records that document information reported under this part and in accordance with TSCA, permit access to, and the copying of such records by EPA officials. Relevant records must be retained for a period of five years beginning on the last day of the submission period.

(h) *Confidentiality claims.*

(1) *Assertion of confidentiality claims*—(i) *Generally*. Any person submitting information under this part may assert a confidentiality claim for that information, except for information described in paragraph (h)(1)(ii) of this section. Any such confidentiality claims must be asserted electronically, pursuant to § 704.180(i), at the time the information is submitted. Information claimed as confidential in accordance with this section will be treated and disclosed in accordance with the procedures in 40 CFR part 2 and section 14 of TSCA.

(ii) *Exceptions*. Confidentiality claims may not be asserted with respect to the following:

(A) Site NAICS code required by § 704.180(e)(3)(v);

(B) For chemical identities and bulk material forms required by §§ 704.180(e)(4)(ii)(A), (iii)(A), (iii)(B)(3), (iv)(B)(1), (v)(B)(1), and (vi)(B)(2);

(C) Any data element that is left blank or designated as “not known or reasonably ascertainable;” or

(D) Health and safety data required by § 704.180(e)(5)(iii), except that the following information may be claimed as confidential:

(1) Information that would reveal processes used in the manufacturing, importing, or processing of the substance or mixture, or the portion of a mixture comprised by any of the substances in the mixture, provided that the information is expressly identified as revealing processing information or portion of a mixture;

(2) Company name or address, financial statistics, and product codes used by a company and contained in a study; and

(3) Information other than company name or address, financial statistics, and

product codes used by a company, which is contained in a study, the disclosure of which would clearly be an unwarranted invasion of personal privacy (such as individual medical records).

(iii) *Certification statement for claims.* An authorized official representing a person asserting a claim of confidentiality must certify that the submission complies with the requirements of this part by signing and dating the following certification statement:

“I certify that all claims for confidentiality asserted with this submission are true and correct, and all information submitted herein to substantiate such claims is true and correct. Any knowing and willful misrepresentation is subject to criminal penalty pursuant to 18 U.S.C. 1001. I further certify that: (1) I have taken reasonable measures to protect the confidentiality of the information; (2) I have determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law; (3) I have a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of my company; and (4) I have a reasonable basis to believe that the information is not readily discoverable through reverse engineering.”

(2) *Substantiation.*—(i) *Requirement to substantiate.* Confidentiality claims must be substantiated at the time of submission to EPA, unless exempt under paragraph (h)(2)(v) of this section.

(ii) *Information in substantiations may be claimed as confidential.* Such claims must be accompanied by the certification described in paragraph (h)(1)(iii), but need not be themselves substantiated.

(iii) *Substantiation questions for all claims.* Answers to the following questions must be provided for each confidentiality claim in a TSCA submission:

(A) Please specifically explain what harm to the competitive position of your business would be likely to result from the release of the information claimed as confidential. How would that harm be *substantial*? Why is the substantial harm to your

competitive position *likely* (i.e., probable) to be caused by release of the information rather than just *possible*? If you claimed multiple types of information to be confidential (e.g., site information, exposure information, environmental release information), explain how disclosure of each type of information would be likely to cause substantial harm to the competitive position of your business.

(B) Has your business taken precautions to protect the confidentiality of the disclosed information? If yes, please explain and identify the specific measures, including but not limited to internal controls, that your business has taken to protect the information claimed as confidential. If the same or similar information was previously reported to EPA as non-confidential (such as in an earlier version of this submission), please explain the circumstances of that prior submission and reasons for believing the information is nonetheless still confidential.

(C)(1) Is any of the information claimed as confidential required to be publicly disclosed under any other Federal law? If yes, please explain.

(2) Does any of the information claimed as confidential otherwise appear in any public documents, including (but not limited to) safety data sheets; advertising or promotional material; professional or trade publications; state, local, or Federal agency files; or any other media or publications available to the general public? If yes, please explain why the information should be treated as confidential.

(3) Does any of the information claimed as confidential appear in one or more patents or patent applications? If yes, please provide the associated patent number or patent application number (or numbers) and explain why the information should be treated as confidential.

(D) Is the claim of confidentiality intended to last less than 10 (ten) years (see TSCA section 14(e)(1)(B))? If yes, please indicate the number of years (between 1 (one) and 10 (ten) years) or the specific date after which the claim is withdrawn.

(E) Has EPA, another federal agency, or court made any confidentiality determination regarding information associated with this chemical substance? If yes, please provide the circumstances associated with the prior determination, whether the information was found to be entitled to confidential treatment, the entity that made the decision, and the date of the determination.

(iv) *Exemptions from the substantiation requirement.* Confidentiality claims are exempt from the requirement to substantiate the claim at the time of submission for the data elements required pursuant to paragraphs (e)(4)(ii)(B)(I), (iii)(B)(I), (iv)(A), (iv)(B)(2), (v)(A), (v)(B)(2), (vi)(A), and (vi)(B)(3) of this section.

(v) *No claim of confidentiality.* Information not claimed as confidential in accordance with the requirements of this section may be made public without further notice.

(vi) *Public copies.* Submissions and their accompanying attachments that include a confidentiality claim must be accompanied, at the time of submission, by a public version of the submission and any attachments, with all information that is claimed as confidential removed. Only information that is claimed as confidential may be redacted or removed. Generally, a public copy that removes all or substantially all of the information would not meet the requirements of this paragraph.

(A) Where the electronic reporting tool contains a checkbox or other means of designating with specificity what information is claimed as confidential, no further action

by the submitter is required to satisfy this requirement.

(B) For all other information claimed as confidential, including but not limited to information in attachments and in substantiations required under paragraph (h) of this section, the submitter must prepare and attach a public copy. Submissions with public or sanitized copies that are entirely blank or that are substantially reduced in length as compared to the CBI version will not meet the requirements of this paragraph (h)(2)(vi) of this section.

(i) *Electronic reporting.*

You must use the EPA Central Data Exchange (CDX) to complete and submit the information required under this section. Submissions may only be made as set forth in this paragraph. Submissions must be sent electronically to EPA using the asbestos reporting tool in CDX. The information submitted and all attachments (unless the attachment appears in scientific literature) must be in English. All information must be true and correct. Access the asbestos reporting tool and instructions, as follows:

(1) *By website.* Access the asbestos reporting tool via the CDX homepage at <https://cdx.epa.gov/> and follow the applicable instructions.

(2) *By phone or e-mail.* Contact the EPA TSCA Hotline at (202) 554-1404 or TSCA-Hotline@epa.gov.

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